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VIA ECF

Hon. Rukhsanah L. Singh, U.S. Magistrate Judge
United States District Court- District of NJ
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Court Room 7W
Trenton, NJ 08608

Re: In re: Johnson & Johnson Talcum Powder Products, Marketing, Sales Practices and Products Liability Litigation., MDL 2738

Plaintiffs represented by Napoli Shkolnik's response to Defendants' request for telephone conference and leave to file motion to dismiss.

This document relates to:

Eleanor Mancini 3:17-cv-12662
Kevita Spear 3:17-cv-12705
Michael Prosser 3:17-cv-12688
Jerry Cook 3:17-cv-12703
Renee Doyle 3:17-cv-12715
James Fierro 3:17-cv- 12716
Patricia Christian 3:17-cv-12719
Robert Gadfield 3:17-cv-12704

Dear Magistrate Singh:

This firm represents the Plaintiffs in the above referenced eight matters. We write on behalf of these Plaintiffs in response to the Defendants' request for a telephone conference and leave to file Motions to Dismiss, filed on December 14, 2023 (Doc. No. 28797) and pursuant to the Court's December 18, 2023 Order. For the reasons specified below, the Napoli Shkolnik Plaintiffs respectfully request that Defendants be denied the opportunity to seek dismissal of these cases.

The eight (8) Plaintiffs identified in Defendants' Exhibit A (Doc. No. 28797-1) that are represented by Napoli Shkolnik hereby oppose Defendants' request and respectfully submit that it should be denied by the Court as: (1) one Plaintiff will be voluntarily discontinuing her case, (2)



two Plaintiffs have already served the Plaintiff Profile Forms and, (3) some Plaintiffs need an extension of time to complete their Plaintiff Profile Forms. Accordingly, the Defendants' request should be denied.

There are only five Plaintiffs referenced below who need additional time to complete their Plaintiff Profile Forms. We have not been able to reach four of these plaintiffs since the bankruptcy stay was lifted. One Plaintiff recently passed away due to the grave nature of her cancer diagnosis. We have put in place concrete efforts to locate this Plaintiff's heirs to see if they want to continue with the claim. As a result, these Plaintiffs respectfully request an additional 90 days to submit their Plaintiff Profile Forms. This extension of time will not cause any substantial prejudice to Defendants.

Although Federal Rules of Civil Procedure grant the Court discretion in fashioning appropriate sanctions under Rule 37, the Third Circuit has noted that it is not "equivalent to *carte blanche*" as due process limits the courts' discretion in two ways: (1) any sanction must be just, and (2) the sanction must be related to the particular claim which is at issue in the discovery order. (Please see *Clientron Corp. Devon IT, Inc.* 894 F. 3d, 568, 580 [3rd Cir. 2018]; *Harris v City of Philadelphia*, 47 F. 3d. 1311, 1330 [3rd Cir. 1995]). Dismissal of Plaintiffs' claims as a discovery sanction, would be unjust and unwarranted, as granting an extension to complete Plaintiff Profile Forms does not cause substantial prejudice to Defendants. Furthermore, this is the Plaintiffs' initial request for an extension of time.

Defendants' request references the April 20, 2021 (Doc. No. 19911) Court Order setting the initial deadline for completion of the Plaintiff Profile Forms for no later than October 20, 2021. However, as this Court is aware, LTL Management, LLC filed for bankruptcy relief on October 14, 2021, in the Bankruptcy Court for the Western District of North Carolina. The bankruptcy proceeding was later transferred to the District of New Jersey. See *In re: LTL Management, LLC*, 64 F. 4th 84 (3rd Cir. 2023). As a result of this bankruptcy filing, all pending lawsuits in the Talc MDL were then stayed for approximately two years and were derailed by the Defendants pending bankruptcy court rulings, including dismissal in the Third Circuit and re-filing of bankruptcy proceedings on a second failed occasion by LTL Management, LLC. The dismissal of the second bankruptcy proceedings which lifted the stay on all pending lawsuits was issued on August 11, 2023, by Judge Kaplan in the United States Bankruptcy Court, District of New Jersey.

The Defendants' two failed bankruptcy attempts caused nearly two years of delay in this MDL. Despite the Defendants delay tactics, they now seek leave to file motions to dismiss certain Plaintiffs' cases for a delay of weeks in serving Plaintiff Profile Forms. The Defendants also failed to reach out to Plaintiffs' counsel by phone, in a good faith attempt to resolve any of these discovery disputes before contacting the Court with these matters. Accordingly, since the Defendants' request is unreasonable, Plaintiffs respectfully request this Court deny their request for leave to file Motions to Dismiss.



I. PLAINTIFF WHOSE CASE CAN BE VOLUNTARILY DISCONTINUED

The following case can be voluntarily discontinued:

1. Eleanor Mancini (3:17-cv-12662). The parties should be able to file an appropriate stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure.

II. PLAINTIFFS WHO SUBMITTED THEIR PLAINTIFF PROFILE FORMS

The following 2 Plaintiffs submitted their Plaintiff Profile Forms on the MDL Centrality portal therefore Defendant's request with respect to these Plaintiffs should be withdrawn as moot:

1. Kevita Spear (3:17-cv-12705)– submitted on 11/28/2023
2. Michael Prosser (3:17-cv-12688) – submitted on 11/28/2023

III. PLAINTIFFS WHO NEED ADDITIONAL TIME

Plaintiffs' Counsel respectfully requests ninety (90) days, until April 9, 2024 to submit the Plaintiff Profile forms for the following 5 Plaintiffs:

1. Jerry Cook (3:17-cv-12703)
2. Renee Doyle (3:17-cv-12715)- recently passed away on December, 1, 2023.
3. James Fierro (3:17-cv- 12716)
4. Patricia Christian (3:17-cv-12719)
5. Robert Gadfield (3:17-cv-12704)

IV. CONCLUSION

For all of the reasons raised above, the Plaintiffs respectfully request that the Court deny the Defendants the opportunity to file Motions to Dismiss Plaintiffs' claims and instead extend the above Plaintiffs' deadline until April 9, 2024 to submit their Plaintiff Profile Forms.

Respectfully submitted,

s/ Christopher R. LoPalo

Christopher R. LoPalo

cc: All Counsel of Record (via ECF)